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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
Brimfield School District #309) File No. SLD-51186
Brimfield, Illinois)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
Changes to the Board of Directors of the) CC Docket No. 97-21✓
National Exchange Carrier Association, Inc.)

ORDER**Adopted: January 6, 2000****Released: January 7, 2000**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal submitted by Brimfield School District # 309 (Brimfield), Brimfield, Illinois, dated September 24, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator) on September 17, 1999. Brimfield seeks review of the SLD's denial of certain funding requests for discounted services under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we deny the Letter of Appeal and affirm the SLD's denial of Brimfield's request for discounts.

2. By letter dated September 17, 1999, the SLD rejected certain funding requests made by Brimfield for Funding Year 2 for failure to meet the SLD's minimum processing standards. The SLD stated that the funding requests were being rejected because contracts awarded between July 11, 1997 and February 27, 1998 were required to be rebid for Funding Year 2.² In response, Brimfield filed the instant Letter of Appeal, noting that the Brimfield School District had been

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² Letter from Universal Service Administrative Co., Schools and Libraries Division, to Bill Hunter, Brimfield C.U. School Dist. #309, dated September 17, 1999.

funded for Funding Year 1 at a 40 percent discount and arguing that the SLD has no authority to require school districts to rebid a signed contract.³

3. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library or consortium must seek competitive bids for all services eligible for support.⁵ In accordance with the Commission's rules, the SLD posts an applicant's FCC Form 470 specifying requested services on its web page for 28 days prior to the applicant's signing a contract for eligible services and submitting FCC Form 471.⁶

4. As noted, the Commission's rules provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirement under certain circumstances. Section 54.511(c)(1) exempts contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract and also provides that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational)⁷ would be exempt from the competitive bidding requirement for services provided through December 31, 1998.⁸ The Commission set out these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the universal service competitive bidding system became fully operational.⁹ In addition, once an applicant submits an FCC Form 470 and complies with the 28-day posting period, the applicant is permitted to sign a long-term contract at that time and,

³ Letter from William Hunter, Ed.D., Superintendent/Principal, Brimfield School District #309, to Federal Communications Commission, dated September 24, 1999.

⁴ 47 C.F.R. §§ 54.502, 54.503.

⁵ 47 C.F.R. §§ 54.504, 54.511(c).

⁶ 47 C.F.R. § 54.504(c).

⁷ The February 27, 1998 date referenced by SLD in its September 17, 1998 letter incorporates the 28-day competitive bid waiting period beginning from January 30, 1998 (the date that the Schools and Libraries website became fully operational).

⁸ 47 C.F.R. § 54.511(c)(1). *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1998) (*Fourth Reconsideration Order*). Previously, in an order released on July 10, 1997, the Commission found that only contracts signed after November 8, 1996 and prior to January 30, 1998 were exempt from the competitive bidding requirement for services provided through December 31, 1998. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095 (1997) (*July 10 Order*). Upon reconsideration, however, the Commission subsequently amended section 54.511(c) in order to avoid penalizing those that were uncertain of their rights prior to the release of the *July 10 Order*. *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

⁹ *See Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*); *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

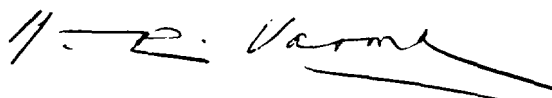
having complied with the competitive bidding requirement prior to signing the contract, the applicant need not submit any additional FCC Form 470s for the duration of that contract.¹⁰

5. The Commission has repeatedly emphasized the importance of the competitive bidding requirement, stating that it helps to ensure that schools and libraries will receive the lowest possible pre-discount price.¹¹ The Commission has concluded that competitive bidding is the most efficient means for ensuring both that eligible schools and libraries are informed about the choices available to them and that prices are not unnecessarily high.¹² In order to ensure that schools and libraries contracting for services between July 10, 1997 and January 30, 1998 did not negotiate long-term contracts and thereby avoid the competitive bidding requirement altogether, the Commission limited the exemption of the competitive bidding requirement for contracts signed between July 10, 1997 and January 30, 1998 to services provided through December 31, 1998, regardless of the duration of the contract as a whole.¹³

6. A review of the record reflects that Brimfield signed a five-year contract for telecommunications services on December 16, 1997. Pursuant to section 54.511(c)(1)(ii), Brimfield was exempt from the competitive bidding requirement for Funding Year 1. As was the case with all schools and libraries entering into contracts between July 10, 1997 and January 30, 1998, Brimfield was required to seek competitive bids for all services eligible for support for Funding Year 2. Because Brimfield did not seek competitive bids for Funding Year 2, we find that the SLD correctly denied Brimfield's request for discounts.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the September 24, 1999 Letter of Appeal filed by Brimfield School District #309, Brimfield, Illinois, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Yog R. Varma
Deputy Chief, Common Carrier Bureau

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, DA 99-1773, 1999 WL 680424 (Com. Car. Bur. 1999), para. 10 ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.").

¹¹ See *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹² *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

¹³ *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.